

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KAL Wine Source SAS,	:	
	:	
Plaintiff,	:	Civil Action No. 1:23-cv-03678
	:	
v.	:	
	:	
Sherry-Lehmann, Inc.,	:	
	:	
Defendant.	:	
-----X		

DECLARATION OF DAVID G. TRACHTENBERG, ESQ.

I, David G. Trachtenberg, under penalty of perjury, declare as follows:

1. I am a member of the firm of Trachtenberg & Arena, LLP, counsel for plaintiff KAL Wine Source SAS (“KAL”). I am a member in good standing of the bar of the State of New York and am admitted to practice in the United States District Court for the Southern District of New York. I respectfully submit this declaration in support of Plaintiff’s Motion for a Default Judgment against defendant Sherry-Lehmann, Inc. (“Sherry-Lehmann”) pursuant to Federal Rule of Civil Procedure 55(b) and S.D.N.Y. Local Rule 55.2.

2. On May 2, 2023 Plaintiff KAL commenced this action to recover damages caused by Defendant Sherry-Lehmann’s failure to deliver wine that Plaintiff had paid for months earlier. Copies of the summons and complaint (ECF Dkt. Nos. 1 and 2) are annexed hereto as Exhibit A.

3. This action was commenced pursuant to 28 U.S.C. §1332 because (a) Plaintiff is a citizen of France, (b) Sherry-Lehmann is a citizen of New York, and (c) the amount in controversy exclusive of interest and costs exceeds \$75,000.

4. The summons and complaint were properly served on Defendant Sherry-Lehmann on May 9, 2023. A copy of the affidavit of service is annexed hereto as Exhibit B.

5. The time for Defendant Sherry-Lehmann to answer or move with respect to the Complaint has expired.

6. Defendant has not answered or otherwise moved with respect to the Complaint, and the time for Defendant to answer or otherwise move has not been extended.

7. Defendant Sherry-Lehmann is a merchant in the business of selling wine. Sherry-Lehmann is a corporation. It is not an infant, in the military, or an incompetent person.

8. On June 15, 2023, the Clerk's Office issued a Certificate of Default against Defendant Sherry-Lehman. A copy of the Certificate of Default is annexed hereto as Exhibit C.

9. Defendant Sherry-Lehmann is a well-known purveyor of wine and spirits having its principal place of business in New York, New York.

10. As alleged in the Complaint, in August 2022 KAL placed with Sherry-Lehmann and Sherry-Lehmann accepted three orders (the "Orders") for cases and bottles of high-end wine (the "Purchased Wine"), with purchase prices aggregating \$307,200. The Orders were denominated as follows:

Order No. 7684097 - \$53,400
Order No. 7684099 - \$201,000
Order No. 7685697 - \$52,800

See Exhibit D hereto.

11. Sherry-Lehmann discounted the purchase price for these Orders by issuing corresponding credit memos in the aggregate amount of \$55,296, which it denominated as follows:

Credit Memo 7684111 - \$45,792
Credit Memo 7685743 - \$9,504

See Exhibit E hereto.

12. Accordingly, pursuant to the Orders and corresponding credit memos, KAL promised to pay Sherry-Lehmann the net discounted purchase price of \$251,904.

13. On August 3, 2022, KAL paid Sherry-Lehmann the net discounted purchase price of \$208,608. On August 26, 2022, KAL paid Sherry-Lehmann the net discounted purchase price of \$43,296. *See* Exhibit F hereto. In total, therefore, KAL paid Sherry-Lehmann the net discounted purchase price of \$251,904.

14. Sherry-Lehmann has failed to deliver the Purchased Wine, and that failure has continued to date despite repeated demands. *See, e.g.* Exhibit G hereto.

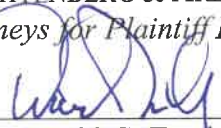
15. Thus, Defendant Sherry-Lehmann has breached its contract with Plaintiff KAL and Defendant Sherry-Lehmann has been unjustly enriched. Defendant Sherry-Lehmann should be adjudged liable to Plaintiff for damages in the amount of \$251,904.

16. Annexed hereto as Exhibit H is a proposed Default Judgment.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief, that the amount claimed is justly due to Plaintiff, and that no part thereof has been paid.

Dated: New York, New York
June 16, 2023

TRACHTENBERG & ARENA, LLP
Attorneys for Plaintiff KAL Wine Source SAS

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